



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,682	05/18/2001	Mark Ashby	032005-097	3365

7590 08/25/2004

Robert E. Krebs
Thenlen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640

EXAMINER

IZAGUIRRE, ISMAEL

ART UNIT	PAPER NUMBER
----------	--------------

3765

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,682

Applicant(s)

ASHBY ET AL.

Examiner

Ismael Izaguirre

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-77 is/are allowed.
- 6) ☒ Claim(s) 78-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/13/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The examiner is appreciative of the changes made to the specification and language of the claims. These have been duly noted and considered.

CLAIMS

Summary

Claims 45, 65 and 78 are the independent claims under consideration in this Office action.

Claims 46-64, 66-77 and 79-82 are the dependent claims under consideration in this Office action.

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 78-82 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kensey et al. (5,676,689).

Kensey et al., applied in the previous Office action, remain applicable. Kensey et al. teach a fluid handling tube. In fact, Kensey et al. teach two fluid handling tubes. The second tube 28 is considered a "fluid handling tube" since it includes a tube structure. Specifically, a lumen (which allows a positioning device 400 to slip therethrough) is provided and defined by a tubular sidewall (at

Art Unit: 3765

proximal end 28A), which includes a plurality of fluid ports emanating from the sidewall, and located at the "T" connection valve 28E. The valve 28E controls the flow of fluid to either port at the T connection.

Claims 78-80 are rejected under 35 U.S.C. § 102(b) as being anticipated by Barnwell (5,462,194).

Barnwell teaches a fluid handling tube and remains applicable to the. Barnwell teaches a fluid handling tube (at 41) having a proximal end 25 with an enlarged portion (at the end of tube 9, figure 4) and a distal end with a fluid port near such end, at 39. A lumen 21 is provided along the tube 41 and further, the tube is defined by a cylindrical sidewall which includes a plurality of fluid ports 27 (figure 4) as noted in column 2, lines 66-67 at the proximal end of the tube for the exit of fluids from the lumen.

Applicant is asked to note the following newly found documents, which are applicable to the claims as follows:

Claims 78 and 81 are rejected under 35 U.S.C. § 102(b) as being anticipated by Morris (4,591,094).

Morris teaches a fluid handling tube 44 (see figure 5, for example) having a proximal end 25 with an enlarged portion 45 and a distal end with a fluid port near such end, at 41. A lumen is provided along the tube 44 and further, the tube is defined by a cylindrical sidewall, which includes a plurality of fluid ports 48 at the proximal end of the tube for the exit of fluids from the lumen.

Claims 78-80 are rejected under 35 U.S.C. § 102(b) as being anticipated by Paczonay (5,601,207).

Art Unit: 3765

Paczonay teaches a fluid handling tube 14 (see figures 2B or 3B, for example) having a proximal end at 22 with an enlarged portion (figure 2D, for example) and a distal end with a fluid port 20. A lumen is provided along the tube and further, the tube is defined by a cylindrical sidewall which includes a plurality of fluid ports 40 or 40A at the proximal end of the tube for the exit of fluids from the lumen.

Claims 78 and 81 are rejected under 35 U.S.C. § 102(b) as being anticipated by Yat Chuen Yuen (2,997,195).

Yat Chuen Yuen teaches a fluid handling tube 12², for example) having a proximal end and a distal end with a fluid port. A lumen is provided along the tube and further, the tube is defined by a cylindrical sidewall which includes a plurality of fluid ports 13 and 13¹ at the proximal end of the tube for the exit of fluids from the lumen.

Allowable Subject Matter

Claims 45-77 are allowable over the art of record.

PERTINENT CITATIONS

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bugge and Nguyen et al. illustrate tubes including a lumen and a plurality of apertures along the sidewall thereof.

INQUIRIES

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 308-0861.

Art Unit: 3765

Any inquiry concerning this communication or earlier communications directed to the examiner should be directed to Mr. Ismael Izaguirre at (703) 308-0892 located in CP2-4B18, Monday through Friday 9:30am to 6:00pm.

A handwritten signature in black ink, appearing to read 'Ismael Izaguirre', with a stylized flourish at the end.

**Ismael Izaguirre
Primary Examiner
Group Art Unit 3765**

II
8/20/04